

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

JCFB, INC.,

Defendant.

Case No. 19-CV-00552-LHK

**ORDER DENYING MOTION FOR
TEMPORARY INJUNCTION
WITHOUT PREJUDICE**

Re: Dkt. No. 46

On August 12, 2019, Michael Buesgens filed a motion for temporary injunction in the instant suit. ECF No. 46. Buesgens is not a Plaintiff, a Defendant, a Plaintiff Intervenor, or a Defendant in Plaintiff Intervenor's first amended complaint, ECF No. 38. Thus, Buesgens is a nonparty to this suit.

Under Ninth Circuit law, District Courts "properly refuse[]" to consider any "motion [that] was filed by a nonparty." *Citibank Int'l v. Collier-Traino, Inc.*, 809 F.2d 1438, 1440 (9th Cir. 1987). If "a party does not formally intervene, it does not have the right to be heard." *Greenbaum v. Islamic Republic of Iran*, 2008 WL 11336781, at *1 (C.D. Cal. July 7, 2008) (citing *Citibank*, 809 F.2d at 1440).

Because Buesgens is a nonparty, under *Citibank*, the Court will not entertain Buesgens'

1 motion for temporary injunction. If Buesgens seeks to participate in this suit, he must first move to
2 intervene under Federal Rule of Civil Procedure 24.

3 Furthermore, the Court notes that even if Buesgens' motion for temporary injunction were
4 addressed on the merits, Buesgens' motion would undoubtedly be denied. A motion for a
5 "temporary injunction" is construed as a motion for a preliminary injunction. *Sparlin v. Bank of*
6 *Am. Home Loans*, 2010 WL 11474945, at *1 (D. Ariz. Oct. 4, 2010). The legal standard for
7 granting preliminary injunction or a temporary restraining order is "substantially identical."
8 *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 (9th Cir. 2001). Specifically,
9 parties seeking a preliminary injunction or a temporary restraining order must establish that: "(1)
10 they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the
11 absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) a preliminary
12 injunction is in the public interest." *Sierra Forest Legacy v. Rey*, 577 F.3d 1015, 1021 (9th Cir.
13 2009).

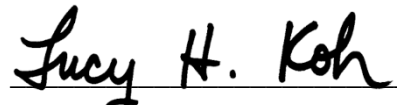
14 Buesgens' motion addresses none of the requirements for a preliminary injunction or a
15 temporary restraining order. Rather, Buesgens' motion mostly consists of statements regarding
16 people who are not parties to this suit, issues that have no bearing on the suit, and non sequiturs.
17 For instance, Buesgens' motion states: "James L. Lee, Jennifer S. Goldstein and Lorraine C. Davis
18 transfer of conciliation failure." ECF No. 46 at 2. The motion also states: "Do James L. Lee,
19 Jennifer S. Goldstein, Lorraine C. Davis and Victoria Lipnic have the legal authority to decide no
20 judicial review anywhere?" *Id.* Also, Buesgens claims that James L. Lee has a "secret and
21 invisible settlement." *Id.* at 3.

22 In sum, the Court DENIES nonparty Michael Buesgens' motion for temporary injunction
23 without prejudice. If Buesgens successfully intervenes in the instant case, he may refile his motion
24 for temporary injunction.

25 **IT IS SO ORDERED.**

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27 Dated: August 14, 2019

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LUCY H. KOH
United States District Judge